



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/080,140

05/15/1998

PATRICIA A. BILLING-MEDEL

6105.US.P1

9090

23492 7590 06/18/2002

ABBOTT LABORATORIES  
DEPT. 377 - AP6D-2  
100 ABBOTT PARK ROAD  
ABBOTT PARK, IL 60064-6050

EXAMINER
----------

CANELLA, KAREN A

ART UNIT	PAPER NUMBER
----------	--------------

1642

DATE MAILED: 06/18/2002

LG

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/080,140

Applicant(s)  
Billing-Medel et al

Examiner  
Karen Canella

Art Unit  
1642



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 months MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 74-95 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 83 is/are allowed.
- 6) ☒ Claim(s) 74-82 and 84-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

Art Unit: 1642

### **DETAILED ACTION**

1. The request filed on May 7, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/080,140 is acceptable and a CPA has been established. An action on the CPA follows.

2. Claims 74-95 are pending and under consideration.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

4. Claims 74-82 and 84-95 are rejected under 35 U.S.C. 102(e) as being anticipated by Au-Young et al (US 5,856,136).

Claims 74-81 and 84-93 are drawn in part to purified polynucleotides comprising SEQ ID NO:4, 5 and 6, vectors, kits thereof. Au-Young et al disclose purified polynucleotides comprising SEQ ID NO: 4, 5 and 6, vectors, and kits thereof. Au-Young et al disclose Sequence 4 (nucleotides 1-207 and nucleotides 102-366) comprising the instant SEQ ID NO:4 and 5, respectively. Au-Young et al disclose Sequence 24 which is identical to the instant SEQ ID NO:6.

Claims 82 and 95 are drawn to the polynucleotide encoding SEQ ID NO:25. Claim 94 is drawn to purified polynucleotides encoding SEQ ID NO:25, 26, 27, 28, 29 and degenerate coding sequences thereof. Au-Young et al disclose Sequence 4 (nucleotides 7-375 and 214-303, respectively) which encodes the instant SEQ ID NO:25 and the instant SEQ ID NO:28; Sequence 25 (nucleotides 60-161) which encodes the instant SEQ ID NO:26; Sequence 23 (nucleotides 160-282) which encodes the instant SEQ ID NO:27; and Sequence 26 (nucleotides 14-76) which encodes the instant SEQ ID NO:29.

Art Unit: 1642

5. Claims 74-81, 84-93, are rejected under 35 U.S.C. 102(e) as being anticipated by Reiter et al (US 6,267,960). Claims 74-81 are drawn in part to purified polynucleotides comprising SEQ ID NO:3, 4 and 5, vectors, kits thereof. Reiter et al disclose the purified polynucleotides of Sequence 1, vectors and kits thereof. Reiter et al disclose the polynucleotide comprising the instant SEQ ID NO:3 as residues 10-288 of Sequence 1, SEQ ID NO:4 as residues 12-218 of Sequence 1, and SEQ ID NO:5 as residues 113-377 of Sequence 1.

### *Conclusion*

6. This is a CPA of applicant's earlier Application No. 09/080,140. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen Canella whose telephone number is (703) 308-8362. The examiner can normally be reached on Monday through Friday from 8:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are

Art Unit: 1642


unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached on (703) 308-3995.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Karen A. Canella, Ph.D.

Patent Examiner, Group 1642

June 7, 2002

  
ANTHONY C. CAPUTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600